(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

Paul J. Jenkins, Trustee of Green River Realty Trust
Petitioner

v.

Meetinghouse Cooperative Bank,
Respondent

Petition For A Writ Of Certiorari
To The Supreme Judicial Court
of Massachusetts

PETITION FOR A WRIT OF CETIORARI

Paul J. Jenkins, Trustee
Green River Realty Trust
PO Box 15
Holbrook, MA 02343
(508) 238-9632

Petitioner. Pro SE

35pp

QUESTIONS PRESENTED

1. Whether or not Petirioner's Due Process rights were violated by the Massachusetts' courts refusal to remove a default judgment obtained without either actual or constructive service of process?

2. Whether or not Petitioner's Due Process rights were violated by the Massachusetts Superior Court's denial of Petitioner's motion to remove a default judgment as a discovery sanction without giving Petitioner leave to argue the sanction issue either orally or in writing?

3. Whether or not Petitioner's Due Process rights were violated by the refusal of the Massachusetts courts refusal to recognize his standing as Successor Trustee of Green River Realty Trust?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Paul J. Jenkins, Trustee of Green River Realty Trust, prays that a Writ of Certiorari issue to review the orders issued by the Massachusetts Appeals Court on March 15, 1995. Said orders were affirmed by the Supreme Judicial Court of Massachusetts when it denied reconsideration of its denial of a "Petition for Further Appellate Review" on July 11, 1995.

OPINIONS BELOW

The Suffolk Superior Court, by Justice Hiller B. Zobel, denied Petitioner's Motion for Relief from judgment as a sanction on December 7, 1993, without allowing Petitioner to be heard (Appendix A).

The Massachusetts Appeals Court affirmed the ruling of the Superior Court on March 15, 1995 (Appendix B).

The Massachusetts Appeals Court, without offering an opinion, denied a Petition for Reconsideration on April 3, 1995 (Appendix C).

The Supreme Judicial Court of Massachusetts, without an opinion, denied an Application for further Appellate Review on June 5, 1995 (Appendix D).

On July 11, 1995 the Supreme Judicial Court of Massachusetts, again without any explanation, denied a Petition for Reconsideration of Denial of Further Appellate Review (Appendix E).

JURISDICTION

The Supreme Judicial Court of Massachusetts denied a Petition for Reconsideration of Denial of Further Appellate Review on July 11, 1995. The Petitioner invokes this certiorari jurisdiction under **28 U.S.C. Section 1257(3).** Petitioner argued below that the trial court's ruling would violate his rights under both the United States Constitution and the well established law of the Commonwealth of Massachusetts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

U.S. CONSTITUTION, ADENDMENT V.

STATEMENT OF CASE

This is a petition for review of an order of the Massachusetts Appeals Court (Appendix B).

On September 23, 1993 Petitioner filed a motion for relief from judgment entered against Green River Realty Trust and Petitioner's predecessor in interest (original trustee Martin J. Worobey). After the trial judge ordered Respondent to depose the Petitioner regarding issues of standing and knowledge, Respondent's counsel engaged in a series of bizarre and abusive tactics which caused the deposition not to occur. On December 7, 1993 the trial court, as a sanction against the Petitioner, denied his Motion for Relief from Judgment (Appendix A). Moreover, the Petitioner was given no opportunity to be heard on the issue before sanctions were imposed. The main issue of Petitioner's motion, i.e., that neither Petitioner nor his predecessor in the underlying action, never received attention by the trial court.

The Massachusetts Appeal Court also never touched the main issue of the case in its ruling (Appendix B).

The Supreme Judicial Court of Massachusetts, in affirming the ruling of the Massachusetts Appeals Court, offered no opinions (Appendices D and E). The final ruling of the Supreme Judicial Court of Massachusetts was July 11, 1995 (Appendix E).

GROUNDS FOR INVOKING THE JURISDICTION OF THIS COURT

(i) Date of Entry of the judgment or decree sought to be reviewed: July 11, 1995.

(ii) Date of any order granting an extension of time within which to file the petition for a Writ of Certiorari: none.

(iii) The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question by writ of certiorari: **Title 28 United States Code. Section 1257.**

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

Constitution of the United States, Amendment V.

REVIEW OF JUDGMENT OF A STATE COURT

Title 28 United States Code, Section 1257

REVIEW OF A JUDGMENT OF A UNITED STATES COURT OF APPEALS

Not applicable

REASONS FOR ISSUING THE WRIT

I. THE TRIAL AND APPELLATE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS VIOLATED THE DUE PROCESS RIGHTS OF THE PETITIONER BY REFUSING TO REMOVE A DEFAULT JUDGMENT OBTAINED WITH NEITHER ACTUAL NOR CONSTRUCTIVE SERVICE OF PROCESS.

Since the Respondent in this case never achieved any manner of service on the Petitioner, Petitioner's predecessor in interest, or any other agent of the Green River Realty Trust, the judgment has to be vacated as "void." **Massachusetts Rule of Civil Procedure 60(b)(4); Luben v. Selective Service System Local Board No. 27, 453 F. 2d 645, 649 (1st Circuit 1972); Field v. Massachusetts General Hospital, 393 Mass. 117, 469 NE2d 117, 118 (1984).**

Not only did Respondent fail to achieve service by sheriff or by publication, they failed to produce a signed mail receipt or other proof of delivery from their random certified mailings to bogus addresses. **See Massachusetts Rule of Civil Procedure (4).**

Under a long line of United States Supreme Court cases notice must be "reasonably calculated, under all the circumstances," to notify interested parties of the pending action. **Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); Greene v. Lindsey, 456 U.S. 444 (1982); Walker v. City of Hutchinson, 352 U.S. 112 (1956). See also Tribe, American Constitutional Law, Sections 10-15.**

Turning to the case at bar, it can hardly be argued that certified mail sent to an inverified address which turns out to be a condominium club house and which is ultimately refused by an unknown party constitues a reasonable effort to serve a defendant.

II. PETITIONER WAS DENIED DUE PROCESS ON DECEMBER 7, 1993 WHEN THE TRIAL COURT IMPOSED SANCTIONS WITHOUT ALLOWING THE PETITIONER TO BE HEARD.

The trial court record in this case will show that the petitioner was afforded no opportunity to be heard on December 7, 1993, although the trial court was about to impose the severest of sanctiond for alleged violations of discovery orders. The record will show the event of December 7, 1993 to have been a "star chamber" proceedings, where the arguments of only one side (the Respondent) were heard.

The right to a hearing is a fundamental due process right. **Morgan v. United States, 304 U.S. 1, 18 (1938); Green v. McElroy, 360 U.S. 474, 497 (1959); Califano v. Yamasaki, 442 U.S. 682, 697 (1979).**

Only extraordinary circumstances may limit or deny the right to a hearing. **Wolff v. McDonnell, 418 U.S. 539, 563-564 (1974); Goss v. Lopez, 419 U.S. 565, 579-580 (1975).** Petitioner can see no extraordinary circumstances in this case which justified severely punishing Petitioner without allowing his to argue in defense of himself.

III. PETITIONER WAS DENIED DUE PROCESS WHEN THE MASSACHUSETTS APPEALS COURT INDICATED THAT PETITIONER COULD NOT REPRESENT THE GREEN RIVER REALTY TRUST AS A TRUSTEE.

The Judicial Court of Massachusetts has specifically held that a corporation cannot be represented **pro se** by any one of its corporate officers. **Varney Enterprises, Inc, WMF, Inc., 402 Mass. 79, 82 (1988).** Aforesaid case has not been extended to other entities, such as trusts, by the Supreme Judicial Court, the highest court of the Commonwealth of Massachusetts. Thus, until the Supreme Judicial Court of Massachusetts speaks further on these issues, there is no case or statutory authorities prohibiting trustees of any variety from representing trusts of any variety on a **pro se** basis. Thus, the Massachusetts Appeals Court, which has no authority to expand the law beyond the precedents set by the Supreme Judicial Court, was being impertinent at best in its rambling, somewhat incoherent discussion of various trust and trustees in its March 15, 1995 rulings, which suggested that Petitioner has no right to appear **pro se** (Appendix B). The Massachusetts Appeals Court had a chance to clarify its ruling but failed to do so (Appendix C). The Supreme Judicial Court

also failed to clarify the situation (Appendices D and E). This situation is further aggravated by the fact that the Petitioner has appeared **pro se** as trustee of another trust before the Massachusetts Appeals Court no more than one occasion. Petitioner had every reasonable expectation of being allowed to appear **pro se** on behalf of any trust until such time, if ever, the settled law changes; such an **ex post facto** change in the rules was fundamentally unfair to the Petitioner.

CONCLUSION

In light of the foregoing, this case is appropriate for review by this Court. It involves significant issues that need to be addressed by this Court. Since the Massachusetts courts have made rulings in conflict with a long line of United States Supreme Court decisions, a decision by this Court is necessary to establish uniformity.

Respectfully submitted

_____

Paul J. Jenkins, Trustee
Green River Realty Trust
Petitioner, **pro se**

Dated: October 2, 1995

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APPENDIX A

Ruling, Suffolk Superior Court, Trial Court of Massachusetts, Dated December 7, 1993.

APPENDIX B

Rescript and Opinion Affirming the Judgment of the Trial Court, Massachusetts Appeals Court, Dated March 15, 1995.

APPENDIX C

Ruling, Denying Petion for Reconsideration, Massachusetts Appeals Court, Dated April 3, 1995.

APPENDIX D

Ruling, Denying Application for Further Appellate Review, Supreme Judicial Court of Massachusetts, Dated June 5, 1995.

APPENDIX E

Ruling, Denying Petition for Reconsideration of Denial of Further Appellate Review, July 11, 1995.

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Massachusetts Rule of Civil Procedure, 60(b)(4).

APPENDIX G

United States Constitution, Amendmant V.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS SUPERIOR COURT
CA - 91-0402

MEETINGHOUSE COOPERATIVE BANK,
Plaintiff

vs.

MARTIN J. WOROBEY, TRUSTEE OF
GREEN RIVER REALTY TRUST, ET ALS
Defendants

MOTION TO REMOVE DEFAULT JUDGMENT ENTERED JULY 1st, 1991 on THE GROUNDS OF BEING VOID (M.R.C.P. 60 (b)(4)

Now come the defendant, Green River Realty Trust, by its successor Trustee, Paul J. Jenkins, and moves this Honorable Court for an order relieving it from the default judgment entered July 1st, 1991, as said judgment is null and void, all in accordance with M.R.C.P. 60(b)(4).

In support thereof, the undersigned states the following:

1. Plaintiff never obtained personal jurisdiction over the former trustee, Martin J. Worobey, having never properly served him by mail, Martin J. Worobey has never lived or owned any of the Florida addresses listed in

A-1 Continued

Affidavit in Support of Default Judgment;

2. Plaintiff reiterates the allegations of paragraph 1, supra, and further states that plaintiff never obtained a signed certified or registered mail receipt received by Martin J. Worobey; and

3. Defendant, moreover, was not properly served by publication or other allowable means of service provided for by these rules.

WHEREFORE, said default judgment should be removed.

/s/ Paul J. Jenkins, Trustee
Green River Realty Trust
PO Box 15
Holbrook, MA 02343-0015
Tel. (508) 238-9632

Dated: December 3rd 1993

The motion is denied. The record amply supports the conclusion that Mr. Jenkins is in violation of at least two court orders. The matter is in my judgment, and as a matter of disretion unsuitable for report to the Appeals Court, and to the extent that Mr. Jenkins is requesting such a report, the request is denied.

/s/ Hiller B. Zobel 12/17/93

B-1

COMMONWEALTH OF MASSACHUSETTS.

Appeals Court For The Commonwealth,

At Boston, March 15, 1995

In The Case Of

MEETINGHOUSE COOPERATIVE BANK

vs.

MARTIN J. WOROBEY, TRUSTEE

pending in the Superior

Court of the County of Suffolk

Ordered, that the following entry be made in the docket; viz., -

Order denying motion to vacate default judgment affirmed.

By the court,

/s/ Nancy Turck Foley, Clerk

March 15, 1995

NOTE:
The original of the within rescript will issue in due course, pursuant to M.R.A.P.23.

APPEALS COURT

B-2

COMMONWEALTH OF MASSACHISETTS

APPEALS COURT

94-P-714

MEETINGHOUSE COOPERATIVE BANK

vs.

MARTIN J. WOROBEY, trustee.(1)

MEMORANDUM AND ORDER UNDER RULE 1:28

Paul J. Jenkins, alleged trustee of Green River Realty Trust (the "trust"), appeals from a Superior Court order denying his motion to vacate a default judgment order against his alleged predecessor as trustee, Martin J. Worobey (A. I:2; II:142). (2) We affirm.

On January 17, 1991, to recover for the deficiencies after foreclosure of mortgages securing payment of two promissory notes, the plaintiff bank commenced this action against Worobey, individually and as trustee of the trust (A. I:1, 3-14).(3) On March 19, 1991, after having made numerous attempts to serve process upon Worobey both at his last known address in Massachusetts

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(1) Of Green River Realty Trust

(2) So much if the default judgment as was entered against Worobey individually is not before us, and we do not address it.

(3) By separate count, the bank also sought trustee process attachment against six trustee defendants (A. I:11-12). A Superior Court judge allowed the bank's ex parte motion for such relief (A. I:1), thus affording all relief sought on the count against the trustee defendants. That count is not before us, and we perceive no problems with the finality of the default judgment.

and at two address in Florida (A. I: 41-43), the bank requested that Worobey be defaulted (A. I:1, 38-39). Worobey was defaulted on June 27, 1991, on which date the bank requested that a default judgment be entered (A. I:1, 77, 78). On July 1, 1991, a default judgment was entered against Worobey, individually and as trustee, in the amount of $341,542,20 under Mass.R.Civ.P. 55(b)(1), 365 Mass. 822 (1974) (A. I;1, 79).

On September 23, 1993, Jenkins, Worobey's alleged successor as trustee, filed a motion under Mass.R. Civ.P. 60(b)(4), 365 Mass. 828-829 (1074) to remove the default judgment on the ground that the judgment is void for lack of service of process on Worobey (A. I:80). On October 26, 1993, a Superior Court judge held an initial hearing on the motion, and ordered Jenkins to attend a deposition to be scheduled by the bank so that the bank could investigate certain issues raised by Jenkins's motion, including the threshold issue of his standing to seek relief. The matter was rescheduled for further hearing on November 23, 1993 (A. I:171-172).(4)

Jenkins failed to appear for a deposition which the bank had scheduled for November 10, 1993, suggesting

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(4) At the October 26 hearing, when asked by the judge, Jenkins stated that Woeobey's address was 4353 N.W. 57th, Coral Springs, Florida (A. I:124). By letter dated November 9, 1993, sent to the bank's counsel, Jenkins stated (A. I:104): "I note that you sent Mr. Worobey's notice to the wrong address, which is 67th Avenue, not 57th."

instead that he be deposed on either November 18 ot 19. The bank scheduled his deposition for November 19, but on November 17, Jenkins informed the bank that he would not appear (A. I:94-95, 99, 104, 106-107, 113, 171-172). The bank rescheduled the deposition for November 29 (A. I:95, 117-118). By order dated November 24, 1993, a second judge found that Jenkins's deposition should take place prior to the hearing on his motion to vacate the default allowed the bank's motion to compel Jenkins to appear for the November 29 deposition, and reschedule the hearing on the motion to vacate until December 7, 1993 (A. I:171-172). Jenkins failed to appear for his deposition on November 29. After hearing on December, 1993, the first judge denied the motion to remove the default, noting that "the record amply supports the conclusion that Mr. Jenkins is in violation of at least two court orders" (A. II:142).

On the record before the judge, there is nothing to show the true nature of the trust at issue, (5) nor is there any evidence to show that Jenkins was purporting to

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(5) There is no indication whether the trust is a nominee trust, where the trustees have only perfunctory duties as compared to the duties of a conventional fiduciary trustee, Rent Control Bd. of Cambridge v. Praught, 35 Mass. App. Ct. 290, 294 (1993), and may act only at the direction of the trust beneficiaries. See Morrison v. Lennett, 415 Mass. 857, 860 (1993). "[F]or many purposes, nominee trusts are regarded as creating a principal-agent, rather than a true trustee-beneficiary, relationship." Moscatiello v. Assessors of Boston, 36 Mass. App. Ct. 622, 625-626 (1994). See most recently Roberts v. Roberts, 419 Mass. , & n.2 (1995).

represent himself as a beneficiary of the trust. A person appearing pro se does not represent another. Varney Enterprises, Inc. v. WMF, Inc., 402 Mass. 79, 82 (1988). As a threshold matter, therefore, the question of whether Jenkins, a pro se litigant, properly could pursue his motion on behalf of the trust or its beneficiaries was a proper subject of judicial inquiry. Comapre id. at 81-82. Jenkins does not contend otherwise, nor does he assert that the first judge erred by ordering him to appear for the deposition scheduled for November 29, 1993. In view of Jenkins's clear violation of court orders regarding discovery with no attempt to

comply or showing of an inability to coomply, (6) the judge's order denying the motion to remove the default judgment was proper. Mass.R.Civ.P. 37(b), as amended, 390 Mass. 1208-1209 (1984). See Roxse Homes Ltd. Partnership v. Roxse Homes, Inc., 399 Mass. 401, 404-406 (1987); Gos v. Brownstein, 403 Mass. 252, 257 (1988) Greenleaf v. Massachusetts Bay Transp Authy., 22 Mass. App. Ct. 426, 429-430 (1986); Maywood Builders

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(6) Pro se litigants are bound by the same rules and requirements as are aprties represented by counsel. Brossard v. West Roxbury Div. of the Dist. Ct. Dept., 417 Mass. 183, 184 (1994).

Supply Co. v. Kaplan, 22 Mass. App. Ct. 944-945 (1986).(7)

In view of the foregoing, we need not address Jenkins's remaining contentions.

Order denying motion to vacate default judgment affirmed.

By the Court (Armstong, Ferretta & Smith, JJ.).

/s/ Nancy Turck Foley
Clerk

Entered: March 15, 1995.

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(7) In not reaching the merits of the motion, the judge also did not consider the affidavit filed in support of it. The affidavit is thus not before us, and Farley v. Sprague, 374 Mass. 419, 423-424 (1978), is inapposite.

C-1

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

94-P-714

MEETINGHOUSE COOPERATIVE BANK

vs.

MARTIN J. WOROBEY, trustee.

The petition for rehearing filed by the appellant havingbeen considered, it is ordered that the said petition be abd it hereby is denied.

By the court (Armstong, Ferretta & Smith, JJ.),

/s/ Lena M. Wong
Assistant Clerk

Entered: April 3, 1995.

D-1

Supreme Court for the Commonwealth of
Massachusetts
1412 Courthouse, Boston,
Massachusetts 02108
(617) 557-1020

Paul J. Jenkins
P. O. Box 15
Holbrook
Holbrook, MA 023453

RE: Docket No. FAR-07835

MEETINGHOUSE COOPERATIVE BANK
vs.
PAUL J. JENKINS & another

NOTICE OF DENIAL OF F.A.R.
APPLICATION

Please take note that on June 5, 1995, the above-captioned Application for Further Appellate Review was denied.

/s/ Jean M. Kennett, Clerk

Dated: June 5, 1995

To: Keith C. Long, Esquire
Paul Jenkins

E-1

Supreme Judicial Court for the
Commonwealth of
Massachusetts
1412 Courthouse, Boston,
Massachusetts, 02108
(617) 557-1020

Paul Jenkins
P. O. Box 15
Holbrook
Holbrook, MA 023453

RE: No. FAR-07835

MEETINGHOUSE COOPERATIVE BANK
vs.
PAUL JENKINS & another

NOTICE OF DOCKET ENTRY

Please note that on July 11, 1995, the following entry was made on the docket of the above-referenced case:

DENIAL of petion for reconsideration of FAR application.

/s/ Jean M. Kennett, Clerk

Dated: July 11, 1995

To: Keith C. Long, Esquire
Paul Jenkins.

MASSACHUSETTS RULE OF CIVIL PROCEDURE 60(b)(4)

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therin arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affet the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of review, of error, of audita querela, and petitions to vacate judgment are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rule or by an independent action.

UNITED STATES CONSTITUTUIN,
AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger: nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb: nor shall be compelled in any criminal case to be a witness against himself, nor be deorived of life, liberty, or proeprty, without due process of law; nor shall private property be taken for public use, without just compenstation.